record. They reveal the fact that at the present time information of such vital concern to a foreign state as to be likely to influence its conduct will necessarily be brought home to it by the straighest path and through the simplest means; and that when any conventional channel seems for any reason to obstruct rather than facilitate the communication of intelligence of such a kind, other means of enlightenment will be employed." (I. p. 711.)

With respect to the League of Nations and the legal relationships created thereby, Professor Hyde does not assume the intolerant attitude of the present American Government and provisions of the Covenant are frequently alluded to and explained. It is carefully pointed out, however, that from these contractual agreements the United States at the present time admits no modifications of the general body of international law. This statement of fact is, of course, a proper one and only a future commentator will be able to say whether or not the United States through its failure to accept the principles of the League placed itself in opposition to the general consensus of international society.

Unlike many publicists on international law the present writer has not confined himself solely to the relations of states which involve a public interest and there are numerous sections of the work which will aid the practitioner in handling private claims of an international nature. Conspicious in this respect are the treatments of such questions as nationality, the presentation and prosecution of private and corporation claims through the proper channels and the grounds upon which government support may be expected.

Professor Hyde has written a distinguished work which will receive immediate and widespread recognition.

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THE SPIRIT OF THE COMMON LAW, by Roscoe Pound, Dean of the Harvard Law School. (Boston: Marshall Jones Co., 1921, pp. xiv, 224.)

Dean Pound deservedly has caught the eye and ear of a contemporary bench and bar to a degree heretofore unknown in America. It is probable that no living man exerts so profound an influence in this field. If for this, reasons are sought they can be found in those things that lie behind the little book on "The Spirit of the Common Law", which in its 224 pages contains the essence of a veritable library of legal history and philosophy. The book with its many examples of brilliant generalization, historical comparison and synthetic deduction could come only from a mind with the widest of horizons. The manner in which Dean Pound draws upon a seemingly inexhaustible store of learning for a steady succession of manuscripts makes one think of the fable in which the god Thor, at the behest of the giant in the castle of Utgard Loke, attempts to drain the giant's drinking horn at a draught, with the resulting discovery that there was an invisible connection with the waters of the great North Sea that made the feat impossible. In this book one finds revelation of those elements which have made it possible for Dean Pound to influence, as perhaps no other does, the trend of thought in the legal world.

It is refreshing to find now and then a book in which there are no footnotes, because the exact scholarship and admittedly accurate deductions of the author have rendered them relatively superfluous. In this particular case there is further reason for the omission. To have adequately annotated this book would have required the appending of the catalogue of a reasonably ample library, with little gain in emphasis, and perhaps a loss of clearness and force.

In these days of alleged judicial maladjustment it is comforting to hear the voice of a leader reassuring us that advance and adaptation by conscious effort are possible. "The real danger to administration of justice according to law is in timid resistance to rational improvement and obstinate persistence in legal paths which have become impossible in the heterogeneous, urban, industrial America of today. Such things have been driving us fast to an administrative justice through boards and commissions, with loosely defined powers, unlimited discretion and inadequate judicial restraints, which is at variance with our legal and political institutions. . . . When the lawyer refuses to act intelligently, unintelligent application of the legislative steam roller by the layman is the alternative." Even under such conditions the writer refuses to allow the "recrudescence of judicial pessimism of the past three years" to force him from his optimistic view.

Against the forces contributing to the very strong emphasis of the individual in our law, feudalism is seen as one force having a softening influence. The spread of the common law has become almost world-wide because of its adaptability to the settling of individual and private contentions, although this very feature "preserves in the modern world the archaic theory of litigation as a fair fight according to the canons of manly art, with the court to see fair play and to prevent interference, . . . (and) is so zealous (in its effort) to see fair play to the individual that it secures very little fair play to the public." The civil law emphasized the "contract", but the common law in its feudal development came to consider the "relationship", rather than the contract out of which the relationship sprang, as the source of rights, duties and obligations. "Something of this spirit, which is the spirit of the strict law, may be recognized today in such doctrines as contributory negligence and the assumption of the risk, and the exaggeration of contentious procedure as a game." The employer's liability acts are then only a reversion to type.

Indicated as among the elements which strengthened the individualistic trend are the following: (1) *Puritanism,* working through the emancipation of the middle class and protestantism. "It was not an accident that the first reformer in English legal thought was also the first reformer in English religious thought." (2) The notion *Law as reason* as opposed to *Law as the will of the sovereign,* that is, the doctrine of "supremacy of law", or the doctrine "that the sovereign, whether king, parliament or people, was bound to act within certain limits imposed on all government by fundamental principles of right and reason, which is beyond the power of lawmakers to change." The dramatic Sunday-morning interview between Lord Coke and James I. is shown to be the prototype of the modern movement to recall judicial decisions. (3) *"The identification of the common law rights of Englishmen*

with the natural rights of man and of the fundamental law for which Coke contended with the immutable and natural law had two consequences for our common law tradition. One was to give currency to the idea of the finality of the common law. . . . (The second) was to intensify the individualism of which for other reasons it had quite enough." The result has been the coloring of judicial interpretation and the introduction of a "governmental maternalism" just as dangerous to the "real purposes of the legal order" as was the over-emphasis of the rights of the sovereign. (4) *The pioneer period in America* with its suspicion of things English, its hostility to a highly trained bar, its really meager learning, and its necessity of making over the common law in a period in which the individual was naturally highly emphasized could but add to the individualistic trend of our law. Really high praise is due to the judges of that time that they did their work as well as they did. (5) *The philosophy of the law of the 19th century,* which included the harmonizing of "external constraint and individual freedom" and the Kantian doctrine of "justice as the maximum of individual self-assertation", to which was opposed the principle of "utility" suggested by Bentham, presents the ideas of the metaphysical and historical jurists combined with those of the utilitarian, to which are added at the close of the century the ideas of the sociological jurist.

In conclusion, Dean Pound points out that there is value in the very cut-and-fit method "of trying the principles and rules and standards in concrete cases, observing their practical operation and gradually discovering by experience of many causes how to apply them so as to administer justice by means of them. Such has been the common law from the first. . . . . Anglo-American law is fortunate indeed in entering upon a new period of growth with a well established doctrine of law-making by judicial decision." The operation of this process is witnessed in at least eight fields during the past generation. With such a background and equipment does the common law enter upon a period in which legal reasoning is to be directed to the interests of the individual, not from his position alone, but with a fairer consideration of social interests. At the close of the book the writer gives reason for the faith that is in him: "For through all vicissitudes the supremacy of the law, the insistence upon law as reason to be developed by judicial experience in the decision of causes, and the refusal to take the burden of upholding right from the concrete and put it wholly upon the abstract all have survived. These ideas are realities in comparison whereof rules and dogmas are ephemereal appearances. They are so much a part of the mental and moral makeup of our race that much more than legal and political revolutions will be required to uproot them."

It is a notable book, worthy of the widest circulation among and the most careful study by jurists and laymen alike.

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